

SECOND REGULAR SESSION

# HOUSE BILL NO. 2165

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BUCHHEIT-COURTWAY.

4606H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 191.1145, 191.1146, 334.108, and 376.1900, RSMo, and to enact in lieu thereof four new sections relating to telemedicine services.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 191.1145, 191.1146, 334.108, and 376.1900, RSMo, are repealed  
2 and four new sections enacted in lieu thereof, to be known as sections 191.1145, 191.1146,  
3 334.108, and 376.1900, to read as follows:

191.1145. 1. As used in sections 191.1145 and 191.1146, the following terms shall  
2 mean:

3 (1) "Asynchronous store-and-forward transfer", the collection of a patient's relevant  
4 health information and the subsequent transmission of that information from an originating  
5 site to a health care provider at a distant site without the patient being present;

6 (2) "Clinical staff", any health care provider licensed in this state;

7 (3) "Distant site", a site at which a health care provider is located while providing  
8 health care services by means of telemedicine;

9 (4) "Health care provider", as that term is defined in section 376.1350;

10 (5) "Originating site", a site at which a patient is located at the time health care  
11 services are provided to him or her by means of telemedicine. For the purposes of  
12 asynchronous store-and-forward transfer, originating site shall also mean the location at  
13 which the health care provider transfers information to the distant site;

14 (6) "Telehealth" or "telemedicine", the delivery of health care services by means of  
15 information and communication technologies which facilitate the assessment, diagnosis,  
16 consultation, treatment, education, care management, and self-management of a patient's

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 health care while such patient is at the originating site and the health care provider is at the  
18 distant site. Telehealth or telemedicine shall also include the use of asynchronous store-and-  
19 forward technology, **including the use of such technology through an adaptive**  
20 **questionnaire.**

21 2. Any licensed health care provider shall be authorized to provide telehealth services  
22 if such services are within the scope of practice for which the health care provider is licensed  
23 and are provided with the same standard of care as services provided in person. This section  
24 shall not be construed to prohibit a health carrier, as defined in section 376.1350, from  
25 reimbursing nonclinical staff for services otherwise allowed by law.

26 3. In order to treat patients in this state through the use of telemedicine or telehealth,  
27 health care providers shall be fully licensed to practice in this state and shall be subject to  
28 regulation by their respective professional boards.

29 4. Nothing in subsection 3 of this section shall apply to:

30 (1) Informal consultation performed by a health care provider licensed in another  
31 state, outside of the context of a contractual relationship, and on an irregular or infrequent  
32 basis without the expectation or exchange of direct or indirect compensation;

33 (2) Furnishing of health care services by a health care provider licensed and located in  
34 another state in case of an emergency or disaster; provided that, no charge is made for the  
35 medical assistance; or

36 (3) Episodic consultation by a health care provider licensed and located in another  
37 state who provides such consultation services on request to a physician in this state.

38 5. Nothing in this section shall be construed to alter the scope of practice of any  
39 health care provider or to authorize the delivery of health care services in a setting or in a  
40 manner not otherwise authorized by the laws of this state.

41 6. No originating site for services or activities provided under this section shall be  
42 required to maintain immediate availability of on-site clinical staff during the telehealth  
43 services, except as necessary to meet the standard of care for the treatment of the patient's  
44 medical condition if such condition is being treated by an eligible health care provider who is  
45 not at the originating site, has not previously seen the patient in person in a clinical setting,  
46 and is not providing coverage for a health care provider who has an established relationship  
47 with the patient.

48 7. Nothing in this section shall be construed to alter any collaborative practice  
49 requirement as provided in chapters 334 and 335.

191.1146. 1. Physicians licensed under chapter 334 who use telemedicine shall  
2 ensure that a properly established physician-patient relationship exists with the person who  
3 receives the telemedicine services. The physician-patient relationship may be established by:

4 (1) An in-person encounter through a medical interview and physical examination;

5 (2) Consultation with another physician, or that physician's delegate, who has an  
6 established relationship with the patient and an agreement with the physician to participate in  
7 the patient's care; or

8 (3) A telemedicine encounter, if the standard of care does not require an in-person  
9 encounter, and in accordance with evidence-based standards of practice and telemedicine  
10 practice guidelines that address the clinical and technological aspects of telemedicine.

11 2. In order to establish a physician-patient relationship through telemedicine:

12 (1) The technology utilized, **including any use of an adaptive questionnaire**, shall  
13 be sufficient to establish an informed diagnosis as though the medical interview **[and] or**  
14 physical examination has been performed in person; and

15 (2) Prior to providing treatment, including issuing prescriptions or physician  
16 certifications under Article XIV of the Missouri Constitution, a physician who uses  
17 telemedicine shall interview the patient, collect or review relevant medical history, and  
18 perform an examination sufficient for the diagnosis and treatment of the patient. A **static**  
19 questionnaire completed by the patient, whether via the internet or telephone, does not  
20 constitute an acceptable medical interview and examination for the provision of treatment by  
21 telehealth.

334.108. 1. Prior to prescribing any drug, controlled substance, or other treatment  
2 through telemedicine, as defined in section 191.1145, or the internet, a physician shall  
3 establish a valid physician-patient relationship as described in section 191.1146. This  
4 relationship shall include:

5 (1) Obtaining a reliable medical history and performing a physical examination of the  
6 patient, adequate to establish the diagnosis for which the drug is being prescribed and to  
7 identify underlying conditions or contraindications to the treatment recommended or  
8 provided;

9 (2) Having sufficient dialogue with the patient regarding treatment options and the  
10 risks and benefits of treatment or treatments;

11 (3) If appropriate, following up with the patient to assess the therapeutic outcome;

12 (4) Maintaining a contemporaneous medical record that is readily available to the  
13 patient and, subject to the patient's consent, to the patient's other health care professionals;  
14 and

15 (5) Maintaining the electronic prescription information as part of the patient's medical  
16 record.

17 2. The requirements of subsection 1 of this section may be satisfied by the prescribing  
18 physician's designee when treatment is provided in:

19 (1) A hospital as defined in section 197.020;

20 (2) A hospice program as defined in section 197.250;

21 (3) Home health services provided by a home health agency as defined in section  
22 197.400;

23 (4) Accordance with a collaborative practice agreement as ~~defined~~ **described** in  
24 section 334.104;

25 (5) Conjunction with a physician assistant licensed pursuant to section 334.738;

26 (6) Conjunction with an assistant physician licensed under section 334.036;

27 (7) Consultation with another physician who has an ongoing physician-patient  
28 relationship with the patient, and who has agreed to supervise the patient's treatment,  
29 including use of any prescribed medications; ~~or~~

30 (8) On-call or cross-coverage situations; **or**

31 **(9) A digital format through an adaptive questionnaire based on professional**  
32 **practice standards.**

33 3. No health care provider, as defined in section 376.1350, shall prescribe any drug,  
34 controlled substance, or other treatment to a patient based solely on an evaluation over the  
35 telephone; except that, a physician or such physician's on-call designee, or an advanced  
36 practice registered nurse, a physician assistant, or an assistant physician in a collaborative  
37 practice arrangement with such physician, may prescribe any drug, controlled substance, or  
38 other treatment that is within his or her scope of practice to a patient based solely on a  
39 telephone evaluation if a previously established and ongoing physician-patient relationship  
40 exists between such physician and the patient being treated.

41 4. No health care provider shall prescribe any drug, controlled substance, or other  
42 treatment to a patient based solely on an internet request or ~~an~~ **a static** internet  
43 questionnaire.

376.1900. 1. As used in this section, the following terms shall mean:

2 (1) "Electronic visit", or "e-visit", an online electronic medical evaluation and  
3 management service completed using a secured web-based or similar electronic-based  
4 communications network for a single patient encounter. **The sole use of technology through**  
5 **an adaptive questionnaire shall not constitute an electronic visit.** An electronic visit shall  
6 be initiated by a patient or by the guardian of a patient with the health care provider, be  
7 completed using a federal Health Insurance Portability and Accountability Act (HIPAA)-  
8 compliant online connection, and include a permanent record of the electronic visit;

9 (2) "Health benefit plan" shall have the same meaning ascribed to it in section  
10 376.1350;

11 (3) "Health care provider" shall have the same meaning ascribed to it in section  
12 376.1350;

13 (4) "Health care service", a service for the diagnosis, prevention, treatment, cure or  
14 relief of a physical or mental health condition, illness, injury or disease;

- 15 (5) "Health carrier" shall have the same meaning ascribed to it in section 376.1350;
- 16 (6) "Telehealth" shall have the same meaning ascribed to it in section 208.670.
- 17 2. Each health carrier or health benefit plan that offers or issues health benefit plans
- 18 which are delivered, issued for delivery, continued, or renewed in this state on or after
- 19 January 1, 2014, shall not deny coverage for a health care service on the basis that the health
- 20 care service is provided through telehealth if the same service would be covered if provided
- 21 through face-to-face diagnosis, consultation, or treatment.
- 22 3. A health carrier may not exclude an otherwise covered health care service from
- 23 coverage solely because the service is provided through telehealth rather than face-to-face
- 24 consultation or contact between a health care provider and a patient.
- 25 4. A health carrier shall not be required to reimburse a telehealth provider or a
- 26 consulting provider for site origination fees or costs for the provision of telehealth services;
- 27 however, subject to correct coding, a health carrier shall reimburse a health care provider for
- 28 the diagnosis, consultation, or treatment of an insured or enrollee when the health care service
- 29 is delivered through telehealth on the same basis that the health carrier covers the service
- 30 when it is delivered in person.
- 31 5. A health care service provided through telehealth shall not be subject to any greater
- 32 deductible, co-payment, or coinsurance amount than would be applicable if the same health
- 33 care service was provided through face-to-face diagnosis, consultation, or treatment.
- 34 6. A health carrier shall not impose upon any person receiving benefits under this
- 35 section any co-payment, coinsurance, or deductible amount, or any policy year, calendar year,
- 36 lifetime, or other durational benefit limitation or maximum for benefits or services that is not
- 37 equally imposed upon all terms and services covered under the policy, contract, or health
- 38 benefit plan.
- 39 7. Nothing in this section shall preclude a health carrier from undertaking utilization
- 40 review to determine the appropriateness of telehealth as a means of delivering a health care
- 41 service, provided that the determinations shall be made in the same manner as those regarding
- 42 the same service when it is delivered in person.
- 43 8. A health carrier or health benefit plan may limit coverage for health care services
- 44 that are provided through telehealth to health care providers that are in a network approved by
- 45 the plan or the health carrier.
- 46 9. Nothing in this section shall be construed to require a health care provider to be
- 47 physically present with a patient where the patient is located unless the health care provider
- 48 who is providing health care services by means of telehealth determines that the presence of a
- 49 health care provider is necessary.
- 50 10. The provisions of this section shall not apply to a supplemental insurance policy,
- 51 including a life care contract, accident-only policy, specified disease policy, hospital policy

52 providing a fixed daily benefit only, Medicare supplement policy, long-term care policy,  
53 short-term major medical policies of six months' or less duration, or any other supplemental  
54 policy as determined by the director of the department of commerce and insurance.

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